

EXHIBIT Q

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

11 CR 300 (JSR)

5 DAVID ROSEN,

6 Defendant.

7 -----x

8 New York, N.Y.
9 May 7, 2012
3:45 p.m.

10 Before:

11 HON. JED S. RAKOFF

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
18 BY: GLEN MCGORTY, ESQ.
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Assistant United States Attorneys

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1 THE COURT: So the first of the remaining objections
2 is that paragraph 37 of the PSR refers to certain acts that
3 William Boyland undertook that the defense says are really not
4 MediSys-related. What is the government's view of that?

5 MR. MCGORTY: Your Honor, I believe it specifically
6 and exclusively refers to the \$22,000 in state grants to Urban
7 Strategies, which is line 4 of paragraph 37. And as to that we
8 agree with the defense.

9 THE COURT: All right. So we will ask the Probation
10 Office to correct that. The second one is that the PSR asserts
11 that MediSys received \$400,000 from the funds Carl Kruger
12 awarded to Brooklyn and Jamaica Hospitals, whereas according to
13 the defense, no MediSys-related entity received those funds.
14 What is the government's view of that?

15 MR. MCGORTY: The grants were requested, but the
16 defendant is correct; those funds were never ultimately
17 received by MediSys. So we won't object.

18 THE COURT: We will correct that and we will have the
19 Probation Office correct that as well.

20 Any objections to the report from the government?

21 MR. MCGORTY: No, your Honor.

22 THE COURT: All right. Let's first turn to the least
23 important part of this sentence, which is the calculation of
24 the guidelines, which I am required to do, regretfully, even
25 though this is just the latest example of the guidelines'

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1 totally hollow and bizarre efforts to determine a sentence
2 chiefly by reference to the amount of money involved, which
3 surely is not irrelevant, but under the guidelines plays an
4 overwhelming role that is contrary to those elementary notions
5 of justice or even common sense. The guidelines, for example,
6 seem to be of the view that if some swindler, such as one that
7 I once prosecuted many years ago, swindles, in that case I'm
8 thinking of, three widows out of every last penny they have
9 been left by their late husbands, but the total amount that he
10 obtains is only a few hundred thousand dollars, he should be
11 given under the guidelines a much lower sentence than someone
12 who commits, say, an accounting fraud that cheats every
13 shareholder in a company out of 50 cents but because there are
14 a million shareholders amounts to a much greater loss. This is
15 a morally repugnant view of sentencing that this Court will not
16 give more than the modest efforts it is due.

17 But I am required to calculate the guidelines, and it
18 all turns on the amount involved. The Probation Office says it
19 is a total offense level of 36 and a criminal history of
20 category I. There is a secondary issue about abuse of trust,
21 but getting first to the amount involved, the defense says it
22 should be calculated as between \$400,000 and a million. The
23 Probation Office and the government says more than a million.

24 So let me hear first from the defense and from the
25 government at that point.